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April 27, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

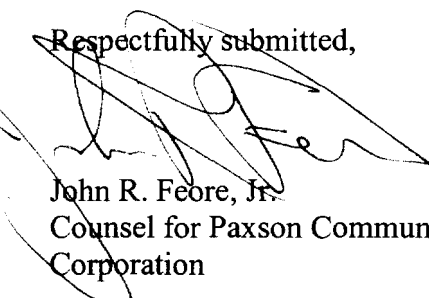
Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Paxson Communications Corporation
Notice of Proposed Rulemaking regarding Assessment and
Collection of Regulatory Fees for Fiscal Year 2001
MD Docket No. 01-76

Dear Ms. Salas:

On behalf of Paxson Communications corporation ("PCC"), we transmit herewith PCC's Comments in response to the above-referenced Notice of Proposed Rulemaking ("NPRM"). As required pursuant to paragraph 32 of the NPRM, we have on this date delivered to Mr. Terry Johnson of the Commission a "read only" mode diskette copy of Paxson's Comments in IBM compatible format using Microsoft Word for Windows, version 7. As required by the NPRM, we also are providing a copy of the diskette to International Transcription Services. Please contact the undersigned counsel if you have any questions concerning this matter.

Respectfully submitted,


John R. Feore, Jr.
Counsel for Paxson Communications
Corporation

Enclosure

cc: Mr. Terry Johnson
International Transcription Services

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 2001)

MD Docket No. 01-76

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF
PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("Paxson"), by its attorneys, hereby submits its Comments in response to the FCC's *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Paxson owns and operates the largest broadcast television group in the United States and the seventh and newest over-the-air broadcast network, PAXTV.

Paxson has serious concerns about both the fee levels the Commission proposes for television broadcasters, particularly those in the UHF service, and the manner in which the Commission arrived at those levels. Specifically, Paxson believes that the Commission has failed to exercise its fee-setting authority consistent with the Congressional directives that fees be based on the benefits that each group of regulated parties derives from Commission activity, and that such fees be adjusted to take into account the public interest.

If the Commission adopts the fee schedule it has proposed, Paxson will pay at least \$576,870 in regulatory fees for 2001. Paxson's three UHF construction permits alone will cost it a total of \$12,000, a forty-three percent increase over last year. Paxson respectfully submits that

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Notice of Proposed Rulemaking*, MD Docket No. 01-76, FCC 01-97 (rel. March 29, 2001) ("Notice").

these fees are unreasonable given the financial demands placed upon television broadcasters by the ongoing digital transition, the acknowledged handicaps under which UHF broadcasters labor, and the slowing economy. Thus, Paxson requests that the Commission reconsider its proposed fee schedule based on its statutory authority to adjust the fees of television broadcasters downward to reflect the industry's increased costs. Doing so would further the public interest of preserving and protecting over-the-air television broadcasters during this time of significant transition.

I. The Commission's Fee Proposal For UHF Construction Permits Reveals a Broken Fee Allocation System.

The Commission has proposed a massive **forty-three percent increase** in the fees required for maintaining UHF construction permits while proposing only a fourteen percent increase for VHF permits.² This proposal will set the fee for holding a UHF construction permit at a rate \$1,000 higher than the fee for holding a VHF construction permit,³ despite the fact that when Congress originally set the regulatory fees, it directed that UHF construction permit fees be \$800 lower than their VHF permits.⁴ These significant increases are proposed despite the fact that the Commission is required to collect only 7.75 percent more revenue in fees during 2001

² Compare Notice at Attachment C with 2000 Assessment at Attachment E.

³ Notice at Attachment C.

⁴ 47 U.S.C. § 159(g). Moreover, when Congress revisited the issue of the fees to be collected for construction permits in 1996, it adhered to its earlier determination that UHF construction permits should carry a smaller fee than VHF permits, increasing the disparity to \$1,000. *Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order*, 11 FCC Rcd 18774, ¶ 2 and Appendix E (citing Public Law No. 104-134). Although UHF construction permits have been more expensive than their VHF counterparts since fiscal year 1998, the Commission has never explained precisely why this is so given Congress's consistent judgement to the contrary.

than was required in 2000.⁵ In contrast to the UHF construction permit fees, several classes of regulated parties saw their fees fall more than twenty percent, including regulated parties in the Shared Use Private Land Mobile Radio Service, the General Mobile Radio Service, and the Aviation service.⁶

These distortions are caused by the Commission's unreasonable reading of the regulatory fees statute.⁷ The statute is intended to empower the Commission to recover, through yearly fees levied directly on regulated parties, an amount equal to Congress's appropriations for the Commission's regulatory activities.⁸ While the statute envisions yearly adjustments to the Commission's fees, the guiding principle for making these adjustments is that they reasonably "relate[] to the benefits provided to the payor of the fee by the Commission's activities," and that they comport with the public interest.⁹ The statute also requires the Commission to adjust fees in order to account for significant changes in the number of parties in each regulated class.¹⁰

⁵ Notice at ¶ 14.

⁶ Compare Notice at Attachment C with 2000 Assessment at Attachment E.

⁷ 47 U.S.C. § 159.

⁸ *Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Notice of Proposed Rulemaking*, 9 FCC Rcd 6957, at ¶ 1 (1994). In its original form, the statute set fees for each class of Commission regulated parties. 47 U.S.C. § 159 (b)(1)(C), (g). Going forward, the statute requires the Commission to adjust its fee schedule yearly to guarantee that it will collect sufficient funds to cover Congress's appropriations for the Commission's regulatory activities for each fiscal year. 47 U.S.C. §§ 159 (a)(2), (b)(1)(B).

⁹ See 47 U.S.C. § 159 (b)(1)(A). The statute also provides two specific methods for fee adjustment: first, it provides for mandatory adjustments to the fee schedule in proportion to the overall increase (or decrease) in the amount appropriated by Congress over the previous year;⁹ second, it allows for permitted adjustments to reflect additions or eliminations of Commission activities or to in any way conform the fees to the general requirements of the statute. 47 U.S.C. § 159 (b)(3).

¹⁰ 47 U.S.C. § 159(b)(2)(A).

This year, Congress raised its appropriation for Commission regulatory activity by 7.75 percent to \$200,146,000.¹¹ The *Notice* indicates, however, that in adjusting the fees to recover the increased amount, the Commission will be acting contrary to its above-described powers and responsibilities. Instead, it will follow a course that it has set over the last two years of across the board “proportional” increases in fees. Specifically, for the last two years and continuing with this year’s *Notice*, the Commission appears to have abandoned the statutory command that its fees be based on the principal of reimbursement for benefits provided to regulated parties by Commission activities.¹² In each proceeding, the Commission has provided explanations for why it is deviating from this command, but it has yet to adequately explain its authority to do so.¹³ Moreover the Commission has disavowed any intention to make adjustments to this year’s fees under its broad public interest authority conferred by Subsection (b)(1)(A).¹⁴

Instead of carrying out these two statutory mandates, the Commission proposes to simply make an across the board 7.75 percent increase in the amount of revenue that each class of regulated parties must contribute in fees over what they actually contributed in 2000, then divide that by this year’s number of regulated parties in each class to arrive at each individual party’s

¹¹ *Notice* at ¶ 14.

¹² In both the 1999 and 2000 proceeding, this fact was pointed out by the national Association of Broadcasters. See Comments of the National Association of Broadcasters in MD Docket No. 98-200 (filed April 15, 1999) at 3-5; Comments of the National Association of Broadcasters in MD docket No. 00-58 (filed April 24, 2000) at 2.

¹³ *Notice* at ¶ 7 (describing abandonment of cost-based fee allocation because it “found that some fee categories received disproportionately high cost allocations” and because the limitations imposed to remedy that situation left the Commission short of the required fee collection); *2000 Assessment* at ¶ 33 (explaining that cost-allocation data was not sophisticated enough to set fees based on cost of regulating each class of regulated parties); *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report and Order* at ¶ 50 (explaining that cost-based allocation of fees provided results too “extreme” to be tolerated).

¹⁴ *Notice* at ¶ 11.

fee.¹⁵ The result is that each individual regulated party's fee will not be adjusted in accord with the amount of Congress's increased appropriations, or with the increased benefit provided by Commission activity, as required by the statute, but instead with the yearly differential in the number of members in the regulated class.¹⁶ Under the FCC's proposals, regulated parties who happen to be in a quickly growing regulated class would be required to pay a lower annual fee simply because there are more members in the class. Logic suggests, however, that the greater number of regulated parties, the greater the expenditure in administrative costs, and therefore, a higher fee. The Commission does not even attempt to adequately reconcile these conflicting propositions, nor has it provided any justification for ignoring the statute's requirement that fees be adjusted to account for increases or decreases in the number of parties in each individual regulated class.¹⁷

II. The Commission Should Adjust Its Fee Schedule in Accordance with Statutory Requirements and to Reflect the Public Interest in Encouraging the DTV Transition.

Instead of the proposal made in the *Notice*, the Commission should adopt a fee schedule that is in keeping with the statute and takes into account broadcasters' significant investment in DTV operations. Paxson accepts that the Commission will be unable to adopt the statutorily prescribed benefit-basis fee allocation this year due to its failure to introduce accounting methods that would allow for it.¹⁸ The Commission can and should, however, act now to eliminate the imbalances that exist in this year's regulatory fee schedule by exercising its power under

¹⁵ *Id.* at ¶¶ 14-16.

¹⁶ *Id.* at fn. 17.

¹⁷ 47 U.S.C. § 159(b)(2)(A).

¹⁸ *Notice* at ¶ 7.

Subsection (b)(1)(A) to reduce the fees of television broadcasters, particularly those in the UHF service.

The extra costs generated by the digital transition, the competitive handicaps inherent in UHF broadcasting, and the overall slowing of the economy, all warrant a reduction in the broadcast television fees for 2001, and for the remainder of the DTV transition. Such a reduction would not require the Commission to raise non-television broadcast fees beyond proportional increases directly tied to increased Congressional appropriations. Instead, regulated parties for whom no compelling case can be made for a freeze or reduction should receive an equal fee increase proportional to their share of Congress's appropriations increases. This course would be consistent with the statute and is simply the right thing to do.

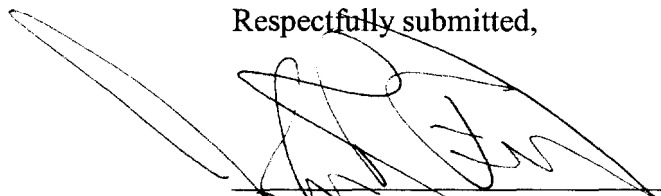
When the Commission institutes more effective cost accounting techniques next year, then it should be in a better position to apportion increases and decreases of regulatory fees based on the differential cost of regulating each class. Even then, however, for the reasons stated above, television broadcasters should be assessed reduced fees through the end of the DTV transition.

Conclusion

The Commission should abandon the fee schedule outlined in the *Notice* and instead apportion the Congressional appropriation increase by *regulated party* rather than by *class*. Furthermore, it should use its public interest authority under 47 U.S.C. § 159(b)(1)(A) to reduce the fees of television broadcasters, particularly UHF broadcasters, to reflect the ongoing demands created by the DTV transition, the slowing economy, and the acknowledged handicaps under which UHF stations operate. At the very least, the Commission must reexamine the fee

for UHF construction permits which increased at an astounding rate for 2001 and now exceed the fees for VHF construction permits in contravention of prior Congressional directives.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Feore, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

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April 27, 2001